Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION ON PETITIONS FOR RECONSIDERATION

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October 31, 1996

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COMMENTS ON PETITIONS FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA"),[1] respectfully submits its comments on the Joint Petition for Reconsideration and Clarification submitted by Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc. ("Joint Petitioners"),[2] and the Petitions for Reconsideration filed by AirTouch

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[1] PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] ("*Joint Petition*"). Public Notice of the *Joint Petition* was given at 61 Fed. Reg. 53922 (Oct. 16, 1996).

Paging ("AirTouch"),[3] Paging Network, Inc. ("PageNet),[4] Kalida Telephone Company, Inc. ("Kalida"),[5] and the Local Exchange Carrier Coalition ("LECC")[6] in the above-captioned proceeding.[7]

As described in more detail below, the stay of the Commission's pricing rules and "pick and choose" rule has created massive confusion in LEC-CMRS interconnection negotiations. To alleviate this confusion, PCIA agrees with the Joint Petitioners that the Commission should clarify that Section 332(c) of the Communications Act of 1934, as amended ("1934 Act"), vests the Commission with exclusive jurisdiction over interconnection between local exchange carriers ("LECs") and commercial mobile radio service ("CMRS") providers. The Commission should use this clear federal authority to readopt the LEC-CMRS rules established in the *First Report and Order*.

PCIA further agrees with AirTouch and PageNet that the Commission should classify messaging carriers as providers of "telephone exchange service" and give such

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[3] ("*AirTouch Petition*"). Public Notice of the *AirTouch Petition* was given at 61 Fed. Reg. 53922 (Oct. 16, 1996).

[4] ("*PageNet Petition*"). Public Notice of the *PageNet Petition* was given at 61 Fed. Reg. 53922 (Oct. 16, 1996).

[5] ("*Kalida Petition*"). Public Notice of the *Kalida Petition* was given at 61 Fed. Reg. 53922 (Oct. 16, 1996).

[6] ("*LECC Petition*"). Public Notice of the *LECC Petition* was given at 61 Fed. Reg. 53922 (Oct. 16, 1996).

[7] FCC 96-325 (rel. August 8, 1996) ("*First Report and Order*").

providers access to termination rates based on LEC proxies. Finally, the Commission should reject Kalida's and LECC's suggestion that messaging carriers should not be compensated for terminating LEC-originated traffic. These actions are vital to ensuring that federal competition policies for CMRS move forward.

I. INTRODUCTION AND SUMMARY

In furtherance of the pro-competitive, deregulatory goals of the Telecommunications Act of 1996 ("1996 Act"), the *First Report and Order* established rules designed to foster competition in the local exchange and exchange access markets by defining: (1) the interconnection obligations of incumbent LECs ("ILECs");[8] (2) ILECs' unbundled network elements;[9] (3) methods of obtaining interconnection and access to ILECs' unbundled network elements;[10] (4) pricing of interconnection and unbundled network elements;[11] and (5) resale of ILEC services.[12] In establishing this regulatory framework, the Commission also promulgated specific rules governing the relationship between LECs and CMRS providers,[13] including the following:

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[8] *First Report and Order*, ¶¶ 172-225.

[9] *Id.*, ¶¶ 226-541.

[10] *Id.*, ¶¶ 542-617.

[11] *Id.*, ¶¶ 618-862.

[12] *Id.*, ¶¶ 863-984.

[13] *Id.*, ¶¶ 999-1026.

- Incumbent LECs must make interconnection available to CMRS providers and offer rates, terms, and conditions that are just, reasonable, and nondiscriminatory.[14]

- LECs must enter into reciprocal compensation arrangements with all CMRS providers -- including paging providers -- for the transport and termination of traffic on each other's networks.[15]

- Default proxy prices are established for termination of local traffic at between 0.2 cents and 0.4 cents per minute, and proxy prices are established for transport that are no greater than the ILEC's tariffed interstate transport charges.[16]

- LECs must pay proxy prices to those carriers that do not have pre-existing interconnection agreements providing for termination of local traffic.[17]

- CMRS providers with pre-existing interconnection agreements that do not compensate the CMRS provider for terminating traffic originated on the landline network may immediately renegotiate these agreements without penalty.[18]

- While the aforementioned renegotiations are pending, a LEC shall pay the CMRS provider for terminating LEC traffic the same rates as charged by the LEC for terminating CMRS traffic.[19]

- LECs may not charge CMRS providers for terminating LEC originated traffic.[20]

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[14] *Id.*, ¶¶ 1012-1015.

[15] *Id.*, ¶ 1008.

[16] *Id.*, Appendix B (to be codified at 47 C.F.R. §§ 51.707(b), 51.513(c)(3)).

[17] *Id.*, Appendix B (to be codified at 47 C.F.R. § 51.715(b)).

[18] *Id.*, Appendix B (to be codified at 47 C.F.R. § 51.717(a)).

[19] *Id.*, Appendix B (to be codified at 47 C.F.R. § 51.717(b)).

[20] *Id.*, Appendix B (to be codified at 47 C.F.R. § 51.703(b)).

- The costs of transmission facilities connecting two carriers' networks (including those between LEC and CMRS networks) shall be allocated based on the proportion of traffic that terminates on the providing carrier's network.[21]

These rules are a continuation of long series of FCC rulemakings under the 1934 Act intended to promote competition for telecommunications services and to establish a level playing field between LECs and CMRS providers.[22] The fundamental holding of these decisions -- which was explicitly extended to all CMRS providers (*i.e.*, cellular carriers, PCS providers, and paging providers) in the Second Report and Order in GN Docket No. 93-252[23] -- is that CMRS providers and LECs are co-carriers. Thus, under these Commission rulings, LECs are required to compensate CMRS providers for the reasonable costs incurred in terminating traffic that originates on LEC facilities.

The Commission based its authority to regulate the relationship between LECs and CMRS providers on Sections 251 and 252 of the 1996 Act. In so doing, the Commission also acknowledged that Sections 332(c) and 201 of the 1934 Act provide

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[21] *Id.*, Appendix B (to be codified at 47 C.F.R. § 51.709(b)).

[22] *See The Need To Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, 59 Rad. Reg.2d 1275 (1986); *The Need To Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services (Interconnection Declaratory Ruling)*, 2 FCC Rcd 2910 (1987), *recon.*, 4 FCC Rcd 2369 (1989) (*Interconnection Reconsideration Order*).

[23] *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1498-1501 (1994).

an alternative basis for jurisdiction, but opted instead to define interconnection obligations pursuant to Sections 251 and 252.[24]

The Joint Petitioners urged the Commission to "more fully acknowledge the extent of its jurisdiction over CMRS interconnection and rely" directly on Section 332(c) as an independent basis for its jurisdiction over LEC-CMRS interconnection.[25] PCIA fully concurs. Indeed, throughout this and related proceedings,[26] PCIA has maintained that the Commission possesses the authority to regulate all aspects of LEC-CMRS interconnection under Sections 332(c) and 201 of the 1934 Act as well as the inseparability doctrine set forth in *Louisiana Public Service Commission v. FCC*.[27]

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[24] "By opting to proceed under sections 251 and 252, we are not finding that section 332 jurisdiction over interconnection has been repealed by implication, or rejecting it as an alternative basis for jurisdiction. *We acknowledge that section 332 in tandem with section 201 is a basis for jurisdiction over LEC-CMRS interconnection;* we simply decline to define the precise extent of that jurisdiction at this time." *Id.*, ¶ 1023 (emphasis added).

[25] *Joint Petition* at 22-23.

[26] The issue of LEC-CMRS interconnection was initially addressed in a separate proceeding (CC Docket Nos. 95-185, 94-54). That proceeding was later incorporated into the instant proceeding regarding local competition (CC Docket No. 96-98). PCIA has actively participated in all phases of these LEC-CMRS interconnection proceedings. *See, e.g.*, PCIA Comments in CC Docket Nos. 95-185, 94-54 (filed March 4, 1996); PCIA Reply Comments in CC Docket Nos. 95-185, 94-54 (filed March 25, 1996); PCIA Comments in CC Docket No. 96-98 (filed May 16, 1996); PCIA Reply Comments in CC Docket No. 96-98 (filed May 30, 1996). PCIA has never believed that this consolidation was either necessary or appropriate. Therefore, as a result of the Eighth Circuit's actions, the Commission should considering uncoupling LEC-CMRS interconnection and LEC-competitive LEC interconnection into separate proceedings.

[27] 476 U.S. 355, 370 (1986) ("*Louisiana PSC*").

Further, as a factual matter, paging services are jurisdictionally interstate because in many cases it is impossible to determine on a per call basis whether the page is interstate or intrastate.

Accordingly, to ensure a uniform, nationwide approach to LEC-CMRS interconnection, PCIA urges the Commission, on reconsideration, to declare that it has the authority to regulate such interconnection under Section 332(c) and the inseparability doctrine. Pursuant to this authority, the Commission should re-promulgate the portions of the *First Report and Order* addressing interconnection arrangements between LECs and CMRS providers. In addition, the Commission should categorize messaging carriers as providers of "telephone exchange service," allow messaging providers to avail themselves of rates for traffic termination based on LEC proxy costs, and ensure that messaging providers are compensated for terminating LEC-originated traffic.

The re-establishment of these strong, nationwide rules governing LEC-CMRS interconnection will have a number of salutary effects. First, it will allow the Commission to continue its policy -- which predates the 1996 Act by ten years -- of ensuring fair interconnection agreements for CMRS providers. Second, it will assure equitable compensation for the transport and termination of interconnected traffic, consistent with the Section 332(c) and the 1996 Act. Finally, it will allow interconnection negotiations between LECs and CMRS carriers -- currently thrown into confusion by the Eighth Circuit's stay of the *First Report and Order* -- to resume.

Setting these negotiations back on track will provide CMRS carriers with the opportunity to provide more Americans with a wider variety of low priced wireless service offerings.

II. SECTIONS 332(c) AND 201 OF THE 1934 ACT CONFER BROAD AUTHORITY UPON THE COMMISSION TO REGULATE LEC-CMRS INTERCONNECTION

Sections 332(c) and 201 of the 1934 Act give the Commission exclusive jurisdiction over LEC-CMRS interconnection by "expressing a clear intent to preempt state law"[28] regarding the right of CMRS providers to interconnect with the public switched network. Both the plain language and the legislative history of these sections expressly preclude states from regulating the rates charged for CMRS interconnection. Further, these sections clearly allow the Commission to supervise interconnection arrangements between LECs and CMRS providers.

First, the plain language of Section 332(c) prohibits state entry and rate regulation: "no State or local government shall have any authority to regulate the *entry of or the rates charged by any commercial mobile radio service . . . .*"[29] Therefore, with respect to narrowband CMRS, where all traffic is mobile-terminating, this section clearly preempts state regulation of interconnection rates, because the fees charged by narrowband providers to terminate LEC traffic are indisputably CMRS rates. Regarding broadband CMRS, which most often involves two-way traffic, state

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[28] *Id.* at 368.

[29] 47 U.S.C. § 332(c)(3)(A) (emphasis added).

regulation of interconnection fees also represents prohibited rate regulation because the fees charged by broadband CMRS providers to terminate LEC traffic fall squarely within the definition of CMRS rates. It would be nonsensical to place regulatory oversight for interconnection rates charged by CMRS providers to LECs with the FCC, while permitting the states to regulate interconnection rates charged to CMRS providers by LECs.[30] Finally, permitting states to regulate LEC-CMRS interconnection could create an impermissible barrier to entry if states deny any form of terminating compensation (as some are already doing) or allow LECs to establish non-symmetrical interconnection fees.

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[30] In CC Docket Nos. 95-185 and 94-54, many LECs cited the Commission's decision in *Petition On Behalf Of The Louisiana Public Service Comm'n For Authority To Retain Existing Jurisdiction Over CMRS Offered Within The State Of Louisiana*, 10 FCC Rcd 7898 (1995) ("*Louisiana Public Service Commission*"), as standing for the proposition that Section 332(c)(3) preempts only "rates charged by," not "rates charged to" CMRS providers. As pointed out by PCIA in that docket, this argument reads far too much into *Louisiana Public Service Commission*, which primarily stands for the proposition that the CMRS market in Louisiana was sufficiently competitive to forbid state rate regulation. *Id.*, ¶ 40. In reality, the portion of *Louisiana Public Service Commission* addressing federal jurisdiction over LEC-CMRS interconnection is dictum, reflecting a record that concededly was inadequately developed to permit a well-reasoned holding on this issue. Specifically, the Commission first noted that "[e]stablishing with particularity a demarcation between preempted rate regulation and retained state authority over terms and conditions *requires a more fully developed record than is presented here*. *Id.*, ¶ 45 (emphasis added). Only after issuing this disclaimer did the Commission suggest that "Louisiana's regulation of the interconnection rate charged by landline telephone companies to CMRS providers *appears* to involve rate regulation only of the landline companies, not the CMRS providers, and thus does not *appear* to be circumscribed in any way by Section 332(c)(3)." *Id.*, ¶ 47 (emphasis added).

The Commission also has jurisdiction to mandate LEC-CMRS interconnection directly pursuant to Section 201(a), "upon reasonable request of any person providing commercial mobile service," and Section 332(c) specifically acknowledges this authority to require interconnection with a LEC.[31] According to the legislative history of Section 332(c)(1)(B), Congress "considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."[32] Moreover, Congress has clearly stated that "the intent of this provision . . . is to establish a *Federal* regulatory framework governing the offering of all commercial mobile service."[33] Thus, the plain statutory language and legislative history of Section 332 make it clear that Congress intended to confer a broad grant of federal jurisdiction over CMRS. Indeed, LEC-CMRS interconnection is an area where "Congress has legislated comprehensively, thus occupying the entire field of regulation and leaving no room for the states to supplement federal law."[34]

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[31] 47 U.S.C. § 332(c)(1)(B). As noted previously, as early as 1986, the FCC has adopted strong interconnection rights for CMRS carriers. *See The Need To Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, 59 Rad. Reg.2d 1275 (1986).

[32] H.R. Rep. No. 111, 103rd Cong., 1st Sess. 261 (1993) ("House Report").

[33] H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993) ("Conference Report") (emphasis added).

[34] *Louisiana PSC*, 476 U.S. at 368.

Further, Section 332(c) expresses a Congressional mandate for the Commission to encourage robust competition for CMRS throughout the nation. In this regard, the legislative history states that Section 332 is intended to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[35] Section 332(c) also orders the Commission to annually review "competitive market conditions with respect to commercial mobile services," and based on that review, to promulgate rules that will "promote competition among providers of commercial mobile services."[36] National rules governing interconnection with LECs are critical to establishing fair compensation among CMRS providers.[37] Thus, the Commission is clearly empowered to and should promulgate nationwide rules governing LEC-CMRS interconnection.

Finally, the Commission needs to re-adopt nationwide interconnection rules in order to level the playing field for LEC-CMRS negotiations. At present, negotiations between LECs and CMRS providers have been thrown into massive confusion pending the outcome of the Eighth Circuit proceedings. Confusion breeds delay, which has the practical effect of leaving the old, asymmetrical interconnection agreements in place.

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[35] House Report at 260.

[36] 47 U.S.C. § 332(c)(1)(C).

[37] *First Report and Order*, ¶ 6 ("In this Report and Order, we adopt initial rules designed to . . . open[] the local exchange and exchange access markets to competition").

Therefore, unless the Commission re-promulgates its interconnection rules, LECs will have little, if any incentive to complete negotiations with CMRS providers and hammer out fair, symmetric compensation arrangements.

III. THE INSEPARABILITY DOCTRINE GIVES THE COMMISSION EXCLUSIVE JURISDICTION OVER LEC-CMRS INTERCONNECTION

The interstate and intrastate aspects of LEC-CMRS interconnection are essentially inseparable. As an initial matter, for both broadband and narrowband services, the radio equipment, cables, and switches used to provide interstate communications are inseparable from those used to provide intrastate communications. Further, as the Commission has previously pointed out,[38] many interconnected broadband calls begin as intrastate calls and become interstate calls, or vice versa, as mobile customers move across state lines while calling. Indeed, assigning a particular jurisdictional status to any specific call is likely to be arbitrary.

LEC-narrowband CMRS interconnection also presents an inseparable mix of intra- and interstate aspects. The key to understanding the inseparable nature of most paging services is an understanding of how wide area paging services work.[39] For these services, pages are initiated by the paging party, who often dials an 800 number to reach the paged party. Thus, the paging provider is unaware of the location of the

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[38] *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, CC Docket Nos. 95-185, 94-54, 11 FCC Rcd 5020, 5073 (1996) ("*LEC-CMRS Interconnection Notice*").

[39] It is possible that very small paging providers have all of their transmitters in a single state. However, such entities are becoming exceedingly uncommon.

paging party. Further, in order to reach the paged party -- who might be any place within a multi-state area -- the page is sent out from radio transmitters located in many different states. Most of these radio signals are "wasted," while one actually reaches the paged party's mobile unit. Such an arrangement makes it similarly impossible to ascertain the location of the paged party. Based on these facts, the Commission has concluded that it is "technically and practically infeasible to separate" the "interstate and intrastate" components of nationwide paging service."[40]

Against this background, the inseparability doctrine, as set forth in *Louisiana PSC* and related cases, provides the Commission with an additional basis for denying state jurisdiction over LEC-CMRS interconnection. In *Louisiana PSC*, the Court held that states have exclusive jurisdiction over intrastate communications under Section 2(b) of the Communications Act.[41] The Court noted however, that "where it was not possible to separate the interstate and the intrastate components of the asserted FCC regulation," federal regulation governed to the exclusion of state law.[42] Where

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[40] *Mobile Telecommunications Technologies Corp. Request For A Declaratory Ruling Concerning Preemption Of State Regulation For Nationwide And Multistate Paging Service On Frequency 931.4375 MHz*, 6 FCC Rcd 1938, ¶ 15 (Common Carrier Bureau 1991), *affirmed*, 7 FCC Rcd 4061 (Commission 1992).

[41] "Except as provided in . . . section 332 of this title . . . nothing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, for or in connection with intrastate communication service by wire." 47 U.S.C. § 152(b).

[42] *Louisiana PSC*, 476 U.S. at 376 n.4 (citing *North Carolina Utilities Comm'n v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976); *North Carolina*

(continued...)

"compliance with both federal and state law is in effect physically impossible," federal law must prevail.[43]

Subsequently, in *Public Service Commission of Maryland v. FCC*,[44] the D.C. Circuit applied the inseparability analysis in holding that the FCC had the power to preempt state regulation of the rates LECs charge for discontinuation of interstate *and* intrastate telephone service.[45] In upholding the Commission's jurisdiction, the court stated that preemption is permitted if:

> (1) the matter to be regulated has both interstate and intrastate aspects; (2) FCC preemption is necessary to protect a valid federal regulatory objective; and (3) state regulation would negate the exercise by the FCC of its own lawful authority because regulation of the interstate aspects of the matter can not be unbundled from regulation of the intrastate aspects.[46]

LEC-CMRS interconnection meets all three prongs of this test. First, such interconnection has both interstate and intrastate aspects in that some interconnected broadband calls are interstate, while others are intrastate, and indeed, as noted above, many are both. In addition, as further noted above, when a paging party launches a page, the page goes out over radio transmitters located in many states. Thus,

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[42](...continued)
Utilities Comm'n v. FCC, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977)).

[43] *Id.* at 368.

[44] 909 F.2d 1510 (D.C. Cir. 1990) ("*PSC of Maryland*").

[45] *Id.* at 1516.

[46] *Id.* at 1515 (internal quotations and citations omitted).

depending on where the paged party is located, the call may be either intra- or interstate. *A priori*, however, there is no way to jurisdictionally classify either broadband or narrowband calls.

Second, the federal government has a vital interest in the development of a nationwide wireless infrastructure. This interest is evidenced by the Commission's determination that CMRS facilities -- even those used largely for intrastate traffic -- are important links in an interstate "network of networks."[47] Further, most new CMRS networks are interstate in their own right. Most prominently, broadband PCS is being licensed based on service areas that are drawn without regard to state boundaries.[48] Similarly, wide-area SMR is being licensed based on the Department of Commerce's Economic Areas, another interstate service area.[49] Thus, the Commission has jurisdiction over this important aspect of the nation's interstate telecommunications infrastructure.

Third, regulation of the interstate aspects of LEC-CMRS interconnection cannot be unbundled from regulation of the intrastate aspects, a point which is best illustrated in *Public Utility Commission of Texas v. FCC*.[50] In *PUC of Texas*, the FCC was

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[47] *LEC-CMRS Interconnection Notice*, 11 FCC Rcd at 5024.

[48] *Amendment of the Commission's Rules to Establish New Personal Communications Services (Second Report and Order)*, 8 FCC Rcd 7700, 7733 (1993).

[49] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of an SMR System in the 800 MHz Frequency Band*, 11 FCC Rcd 1463 (1995).

[50] 886 F.2d 1325 (D.C. Cir. 1989) ("*PUC of Texas*").

permitted to preempt state regulations limiting the ability of private microwave network users to interconnect to the LEC of their choice. Such preemption was premised on the inability of the interconnecting carrier to separate its interstate calls from its intrastate calls: "Because of the dual interstate and intrastate use of the private microwave and carrier facilities here at issue . . . acceding to the state action in this case would necessarily negate the federal right of interconnection to the interstate network . . . ."[51] Jurisdiction over interconnection between LECs and CMRS providers is thus exclusively federal.

IV. MESSAGING PROVIDERS SHOULD BE CLASSIFIED AS PROVIDERS OF "TELEPHONE EXCHANGE SERVICE"

In the *First Report and Order*, the Commission failed to explicitly include messaging providers within the definition of "telephone exchange service," while including "cellular, PCS, and covered SMR providers" within this definition.[52] PCIA agrees with PageNet and AirTouch that excluding messaging providers from this

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[51] *PUC of Texas*, 886 F.2d at 1334. *See also Illinois Bell Telephone Co. v FCC*, 883 F.2d 104 (D.C. Cir. 1989); *People of the State of California v. FCC*, 75 F.3d 1350 (9th Cir. 1996).

[52] *First Report and Order*, ¶ 1013.

definition is inconsistent with the 1996 Act, FCC precedent, and judicial precedent, and should therefore be reconsidered.[53]

Specifically, the 1996 Act defines "telephone exchange service" as "service within a telephone exchange" *or* "comparable service provided through a system of switches, transmission equipment, or other facilities . . . by which a subscriber can originate or terminate telecommunications service."[54] Messaging service plainly falls within this definition, as it provides intra-exchange service using the requisite switches and transmission equipment. Further, messaging service is in fact two-way communications, as the paged party receives a page, and the paging party receives audio confirmation that the page has been sent and queued for receipt. Finally, such a definition would be consistent with the Commission's decision in its radio common carrier *Public Notice*,[55] and the United States District Court for the District of Columbia's holding in *United States v. Western Electric Co.*[56]

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[53] *See PageNet Petition* at 13-17; *AirTouch Petition* at 7-12. Consistent with the position taken by PageNet and AirTouch, PCIA is *not* advocating that paging providers be classified as "local exchange carriers." PCIA fully supports the Commission's decision not to classify CMRS providers -- including messaging providers -- as LECs. *First Report and Order*, ¶ 1004.

[54] 47 U.S.C. § 153(47).

[55] 1 FCC 2d 830 (1965) (finding that radio common carrier paging and mobile telephone service is "exchange service within the meaning of Section 221(b)"). *See also Tariffs For Mobile Services*, 53 FCC 2d 579 (1975) (same).

[56] 578 F. Supp. 643, 645 (D.D.C. 1983) (holding that one-way paging services are "exchange telecommunications services" within the meaning of the Consent Decree).

V. LIKE CELLULAR, BROADBAND PCS, AND COVERED SMR PROVIDERS, MESSAGING PROVIDERS SHOULD BE PERMITTED TO USE LEC COSTS AS SURROGATES FOR TERMINATION RATES

The Commission also determined that "with respect to interconnection between LECs and paging providers . . . there should be an exception to our rule that states must establish presumptive symmetrical rates based on the incumbent LEC's costs for transport and termination of traffic."[57] Thus, messaging providers -- unlike cellular, PCS and covered SMR providers -- are not permitted to avail themselves of rates for traffic termination based on LECs' TELRIC transport and termination costs for other carriers. For the public policy reasons set forth below, PCIA joins AirTouch and PageNet in urging the Commission to reconsider this exception to its symmetrical compensation rules.[58]

First, Section 251(i) has been interpreted by the Commission as allowing interconnecting carriers -- including paging providers -- to "pick and choose" among individual terms and conditions found in existing interconnection agreements between LECs and other carriers.[59] Second, the networks of messaging providers employ architectures and switching hardware that is identical to -- if not more complex than -- the networks of other CMRS carriers. Third, treating messaging carriers differently from other CMRS providers that offer similar services places the messaging industry at

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[57] *First Report and Order*, ¶ 1092.

[58] *See PageNet Petition* at 3-12; *AirTouch Petition* at 13-24.

[59] *First Report and Order*, ¶ 1310.

a significant competitive disadvantage. Finally, denying messaging carriers the same cost-based rates as other co-carriers will encourage costly and inefficient arbitrage.

VI. MESSAGING PROVIDERS MUST BE COMPENSATED FOR TERMINATING LEC-ORIGINATED TRAFFIC

In the *First Report and Order*, the Commission determined that all CMRS carriers -- including messaging providers -- offer "telecommunications" within the meaning of Section 3(43).[60] Based on this determination, the Commission determined that pursuant to Section 251(b)(5), messaging providers, as offerors of "telecommunications," are entitled to reciprocal compensation from LECs "for the transport and termination of traffic on each other's networks."[61] Despite this clear statutory command, on reconsideration, some petitioners seek to deny messaging providers the benefits of reciprocal compensation agreements.[62] The arguments set forth by these petitioners are not supported by the 1996 Act, Commission precedent, or the public interest, and should therefore be rejected.

Specifically, Kalida suggests that because messaging providers do not originate any traffic, they should not be compensated for terminating LEC-originated traffic.[63]

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[60] *Report and Order*, ¶ 1008 (citing 47 U.S.C. § 153(43), defining telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information . . .").

[61] *Id.*, ¶ 1008.

[62] *See, Kalida Petition* at 2-8; *LECC Petition* at 17-18.

[63] *Kalida Petition* at 2-6.

This argument is specious for a number of reasons. First, as noted above, in enacting Section 251(b)(5), Congress did not require providers of "telecommunications" to originate traffic in order to receive compensation for terminating calls. Second, the Commission has long held that messaging providers are co-carriers and as such, are entitled to be compensated for terminating LEC-originated calls.[64] Finally, Kalida's proposal ignores the fact that messaging providers create considerable financial benefits for LECs by stimulating usage of the local telephone network due to answered pages, and, frequently, generate interexchange carrier access charges.

LECC further argues that providing messaging carriers with terminating compensation will serve as a "subsidy" to such providers.[65] Again, this argument does not withstand close scrutiny. Terminating compensation cannot be a "subsidy" to messaging providers in that such providers incur legitimate costs in terminating LEC-originated calls *and* offer a valuable service to LEC customers, who need to get in touch with paging subscribers. Thus, far from representing a subsidy, terminating compensation is a fair quid pro quo for valuable services rendered to LECs and their customers by messaging providers.

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[64] *See Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1498-1501 (1994).

[65] *LECC Petition* at 17.

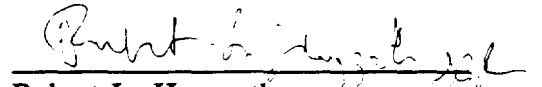
VII. CONCLUSION

PCIA agrees with the Joint Petitioners that the Commission has the jurisdictional authority under Section 332 of the 1934 Act to provide a reasonable and equitable framework for LEC-CMRS interconnection. Accordingly, the FCC should re-assert jurisdiction over LEC-CMRS interconnection pursuant to Section 332(c) of the 1934 Act and the inseparability doctrine. This will clarify that the LEC-CMRS interconnection rules set forth in the *First Report and Order* are still valid, despite the Eighth Circuit's Stay Order. The Commission should also reconsider its decisions: (1) not to classify messaging providers as "providers of telephone exchange service"; and (2) not to permit messaging providers to use LEC costs as surrogates for

termination rates. Finally, the Commission should affirm its decision to ensure that messaging providers are compensated for terminating LEC-originated traffic.

Respectfully submitted,

PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION



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October 31, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1996, I caused copies of the foregoing "Comments On Petitions For Reconsideration" to be mailed via first-class postage prepaid mail to the following:

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